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4-5 May 1995
Item 6 of the provisional agenda*

FULL PARTICIPATION BY THE EUROPEAN COMMUNITY IN THE COMMISSION ON SUSTAINABLE DEVELOPMENT

Note by the Secretariat

1. At its resumed substantive session of 1994, on 4 November 1994, the Economic and Social Council had before it a draft decision (E/1994/L.51) entitled "Full participation by the European Community in the Commission on Sustainable Development", submitted by the representative of Germany.

2. Following statements by the President of the Council, the representative of Germany (on behalf of the States members of the United Nations that are members of the European Union) and the observer for Algeria (on behalf of the States members of the United Nations that are members of the Group of 77 and China), the Council decided to defer further consideration of the draft decision to a future meeting of the resumed substantive session of 1994. It also decided to request the Secretariat to prepare a note that would respond to the various questions raised, including legal questions, as formulated by the President of the Council.

3. The views of the Secretariat on those questions are set out in the following paragraphs.

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What is the relationship between rule 74 of the rules of procedure of the functional commissions of the Economic and Social Council, namely "Participation of other intergovernmental organizations" and rule 69, "Participation of non-member States"?

4. With respect to the relationship between rule 69 and rule 74 of the rules of procedure of the functional commissions of the Economic and Social Council (E/5975/Rev.1), it is sufficient to state that rule 69 governs the participation of Members of the United Nations that are not members of a functional commission, and of any other State, in the deliberations of such a commission, while rule 74 governs the participation of intergovernmental organizations in the deliberations of a commission.

What is provided for (i.e. rights and privileges) under rule 69, "Participation of non-member States"?

5. With respect to the rights and privileges of non-member States, rule 69 states as follows:

> "1. The commission shall invite any Member of the United Nations that is not a member of the commission, and any other State, to participate in its deliberations on any matter of particular concern to that State.
>
> "2. A subsidiary organ of the commission shall invite any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State.
>
> "3. A State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the commission or of the subsidiary organ concerned."

6. Thus a non-member State of a commission has the right to be invited by the commission, and its subsidiary organs, to participate in their deliberations on any matter of particular concern to that State. A non-member State may make statements at any time except during explanations of vote by member States of the commission. While a non-member State does not have the right to vote, it does have the right to submit substantive proposals, including amendments, which may be put to the vote at the request of any member of the commission or subsidiary organ concerned. As is the case with all non-members participating in a commission, a non-member State may not make procedural motions which concern the conduct of business; such motions are reserved solely for full members of the body concerned.

What is a "point of order" both generically and specifically as referred to in paragraph (a) of draft decision E/1994/L.51?

7. With respect to the reference to a "point of order" contained in paragraph (a) of draft decision E/1994/L.51, it is for the sponsors of the draft decision to explain their intent. However, according to that paragraph, the European Community will only have the right to raise as a point of order the fact that consultations are continuing among the European Community and its member States on a matter on which a final decision is about to be made. It is clearly stated that this right shall not include the right to challenge the decision of the chair in response to the original point of order. It is clear that, as formulated in the foregoing terms, the right in question refers to the raising of a point of clarification rather than a point of order as understood in the rules of procedure of United Nations organs.

8. For example, the 1971 report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly, reproduced in annex V to the rules of procedure of the General Assembly (A/520/Rev.15), defines a point of order as "an intervention directed to the presiding officer, requesting him to make use of some power inherent in his office or specifically given him under the rules of procedure ... Points of order ... involve questions necessitating a ruling by the presiding officer, subject to possible appeal." Such an appeal, often referred to as a "challenge", is then put to the vote. If an appeal is carried, the presiding officer has been overruled. It is clear that the so-called "point of order" referred to in paragraph (a) of draft decision E/1994/L.51 does not fall within this meaning of the term but rather constitutes a point of clarification, informing the Council that on a certain issue consultations are still continuing. The President of the Council, its members and the Council as a whole are free to act on that information in any manner which they deem appropriate, without challenge by any non-member of the Council, including the European Community.

9. Moreover, the practice of the United Nations with regard to "true" points of order and points of order used simply to obtain the floor for purposes of clarification is described in the above-mentioned report as follows:

> "Points of order ... are also distinct from requests for information or clarification ... which - while they may have to be dealt with by the presiding officer - do not require rulings from him. However, in established United Nations practice, a representative intending to submit a procedural motion or to seek information or clarification often rises to a 'point of order' as a means of obtaining the floor. The latter usage, which is based on practical grounds, should not be confused with the raising of points of order under rule 73 [114]" (see A/520/Rev.15, rule 71).

10. In 1988, the Legal Counsel advised that while a non-member State of a functional commission of the Economic and Social Council was not entitled to make a point of order within the meaning of the relevant rule of procedure, United Nations practice by which participants rise to a "point of order" as a means of obtaining the floor in order to seek information or clarification

should not be confused with raising "true" points of order under rule 73 [114] (see A/520/Rev.15, rule 71) and which may be entertained by a presiding officer when raised by non-members.

What specifically is meant in paragraph (b) of draft decision E/1994/L.51 by other regional or subregional economic integration organizations and what is implied, as to the role of the Council, in judging "other organizations"?

11. With respect to the interpretation of paragraph (b) of draft decision E/1994/L.51, it is not for the Secretariat to address the intent of the sponsors of the draft decision. It is for the sponsors to indicate their own intent and the implications of their text.

Is this whole process of amending the rules of procedure of functional commissions legal or, more specifically, necessary? Do not the existing rules suffice?

12. With respect to the legality of the process of amending the rules of procedure of the functional commissions, the Council may amend these rules pursuant to rule 77. Furthermore, it may be recalled that the current process is based on General Assembly resolution 47/191 of 22 December 1992, by which the Assembly recommended that the Commission on Sustainable Development "provide for the European Community, within its areas of competence, to participate fully - as will be appropriately defined in the rules of procedure applicable to the Commission - without the right to vote".

13. With respect to whether or not it is necessary to amend the existing rules in order to provide for the full participation of the European Community in the work of the Commission on Sustainable Development, reference should be made to paragraphs 9, 11 and 12 of the report of the Secretary-General on the rules of procedure of the Commission on Sustainable Development (E/1993/12).

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Item 2 of the provisional agenda*

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS

Extraordinary additional session of the Committee on Economic, Social and Cultural Rights in 1995

Note by the Secretariat

1. At its eleventh session, held at the United Nations Office at Geneva from 21 November to 9 December 1994, the Committee on Economic, Social and Cultural Rights decided to transmit to the Economic and Social Council for its consideration the following draft decision in regard to an additional session of the Committee to be held in 1995:

DRAFT DECISION

"Extraordinary additional session for the Committee on Economic, Social and Cultural Rights

"The Economic and Social Council, noting the backlog of States parties' reports awaiting consideration by the Committee on Economic, Social and Cultural Rights, and being aware that such a situation seriously undermines the effectiveness and threatens the credibility of the system for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights, authorizes, on an exceptional basis, the holding of an extraordinary additional session, of three weeks' duration, of the Committee in the second half of 1995. Additionally, the Council authorizes a special five-day meeting of the Committee's pre-sessional working group, to be held immediately following the

* E/1995/2.

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conclusion of the Committee's twelfth session, in order to prepare for the consideration of States parties' reports during the extraordinary additional session of the Committee."

2. In case of adoption by the Council, the above decision, the dates of the Committee's meetings and of its pre-sessional working group would be as follows:

1-19 May 1995 - twelfth session of the Committee

22-26 May 1995 - Pre-sessional working group for the thirteenth (additional) session

20 November-8 December 1995 - thirteenth (additional) session of the Committee

11-15 December 1995 - Pre-sessional working group for the fourteenth session, to be held in May 1996

3. The Council will be informed at its organizational session of any programme budget implications of the draft decision.

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TRANSFORMATION OF THE COMMITTEE ON FOOD AID POLICIES AND PROGRAMMES OF THE WORLD FOOD PROGRAMME INTO AN EXECUTIVE BOARD

Note by the Secretary-General

1. In paragraph 30 of annex I to its resolution 48/162 of 20 December 1993, the General Assembly decided that the same arrangements as those relating to the governing bodies of the United Nations Development Programme (UNDP)/United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF) should apply to the Committee on Food Aid Policies and Programmes of the World Food Programme (WFP), and that consultations between the United Nations and the Food and Agriculture Organization of the United Nations (FAO) should be undertaken as soon as possible for that purpose, in view of the fact that WFP is an autonomous joint organ of both. This process should lead to the adoption of parallel resolutions by the General Assembly and the Conference of the Food and Agriculture Organization of the United Nations.

2. In paragraphs 21 to 30 of annex I to its resolution 48/162, the Assembly outlined the arrangements to be followed with respect to the governing bodies of United Nations development funds and programmes. The Assembly decided that the governing bodies of UNDP/UNFPA and of UNICEF should be transformed into Executive Boards, subject to the authority of the Economic and Social Council. The Assembly also specified the functions of each of the Executive Boards and provided for the holding of and participation in the annual sessions and regular meetings of the Executive Boards. The Assembly stipulated that the Executive Boards of UNDP/UNFPA, UNICEF and, subject to the provisions of paragraph 30, WFP should have 36 members each, and provided for the regional allocation of seats. In order to ensure effective and efficient interaction between the Assembly, the

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3. Council and the individual Executive Boards, each Board will submit an annual report on its programmes and activities to the Council at its substantive session. The report will include a section which follows a common structure on the basis of specific areas designated by the Council or the Assembly.

4. At its thirty-seventh session, in May 1994, the Committee on Food Aid Policies and Programmes of WFP considered the question of the implementation of General Assembly resolution 48/162. The Committee agreed that the implementation of the resolution was binding on the Committee and recalled that in paragraph 30 of annex I to the resolution, the Assembly recognized that WFP was an autonomous joint organ of both the United Nations and FAO. The Committee decided to establish an open-ended working group, open to all committee members, and the European Community as an observer, to consider and make recommendations on the changes to the WFP general regulations and rules of procedure that might be necessary in order to implement Assembly resolution 48/162. The Committee agreed that the working group would also consider necessary changes in the WFP general regulations that would arise from the shift from the present project-based approach to a country-based programme approach, as specified in Assembly resolution 47/199 of 22 December 1992.

5. The working group met on four occasions and submitted its report to the Committee at its thirty-eighth session, held in Rome from 12 to 16 December 1994. In its deliberations, the working group consulted with and was advised by the secretariats of the United Nations and FAO, in accordance with the provisions of paragraph 30 of Assembly resolution 48/162.

6. At its thirty-eighth session, the Committee on Food Aid Policies and Programmes decided to recommend a draft resolution for consideration by the Economic and Social Council and the FAO Council. The text of the draft resolution will be made available to the Council upon receipt.

7. In accordance with paragraph 30 of annex I to Assembly resolution 48/162, a series of consultations have been held between the secretariats of the United Nations and FAO. Following these consultations, and with regard to the future steps to be taken in fulfilment of the requirements of the resolution, the attention of the Council is drawn to the need for the Economic and Social Council and the FAO Council to agree on an appropriate mechanism for consultations between the United Nations and FAO at the intergovernmental level. The recommendations made by the Committee on Food Aid Policies and Programmes at its thirty-eighth session will no doubt form the basis of the consultations between the United Nations and FAO. This process should lead to the adoption of parallel resolutions by the General Assembly and the Conference of the Food and Agriculture Organization of the United Nations.

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Fiftieth session
HUMAN RIGHTS QUESTIONS:
IMPLEMENTATION OF HUMAN
RIGHTS INSTRUMENTS

ECONOMIC AND SOCIAL COUNCIL
Substantive session of 1995
SOCIAL, HUMANITARIAN AND
HUMAN RIGHTS QUESTIONS:
HUMAN RIGHTS QUESTIONS

Letter dated 30 January 1995 from the Permanent Representative of Croatia to the United Nations addressed to the Secretary-General

I would like to present to you, in your capacity as the depositary of multilateral treaties, the position of my Government concerning document E/CN.4/1995/80 of 28 November 1994 on the status of the international covenants on human rights.

The annex to this document deals with the "status of succession, accession or ratification of human rights treaties by States successors to the former Yugoslavia, the former Soviet Union and the former Czechoslovakia".

On the list of States successors to the former Yugoslavia parties to human rights treaties, the dates of the receipt of the instruments of ratification of the former Socialist Federal Republic of Yugoslavia have been indicated as the date of receipt of the relevant instruments for the Federal Republic of Yugoslavia (Serbia and Montenegro), under the name "Yugoslavia".

In my letter addressed to your Excellency dated 16 February 1994 (S/1994/198), the Croatian Government presented its position concerning the question of succession of the Federal Republic of Yugoslavia (Serbia and Montenegro) relating to those treaties.

The Republic of Croatia strongly objects to the claim of the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue the personality of the former Socialist Federal Republic of Yugoslavia, including all its internal, international, legal and political aspects.

In accordance with the relevant resolutions of the Security Council (resolutions 757 (1992) and 777 (1993)) and the General Assembly (resolution

47/1) concerning this issue, the opinions of the Arbitration Commission of the United Nations/European Community International Conference on the Former Yugoslavia, particularly opinions No. 8, 10 and 11 (see S/1994/189, annex) and the general rules of international law on the succession of States, the Federal Republic of Yugoslavia (Serbia and Montenegro) is not - and cannot be - considered the sole and automatic successor to the former Socialist Federal Republic of Yugoslavia.

My Government wishes to stress that the United Nations and other organizations that belong to the United Nations system have confirmed the aforementioned legal status of the Federal Republic of Yugoslavia (Serbia and Montenegro) relating to treaties and to membership in international organizations.

In this sense, the representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) have been prevented from participating in international meetings and conferences of States parties to multilateral treaties in respect of which the Secretary-General acts as depositary (i.e. Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Discrimination against Women, Convention on Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, etc.) as the Federal Republic of Yugoslavia (Serbia and Montenegro) had not acted according to international rules on the succession of States. Namely, the Federal Republic of Yugoslavia (Serbia and Montenegro) has repeatedly tried to participate in international forums as a State party without having notified its succession. In such a way, the Federal Republic of Yugoslavia (Serbia and Montenegro) has tried to create a precedent by which it would later seek to prove that it is the sole and automatic successor to the former Socialist Federal Republic of Yugoslavia.

Other international organizations depositaries of multilateral treaties (i.e., World Health Organization, Council of Europe, Customs Cooperation Council, etc.) as well as Governments depositaries of multilateral treaties (i.e. Treaty on the Non-Proliferation of Nuclear Weapons) have also acted in accordance with the above-mentioned United Nations decisions and international practice.

Numerous States have also accepted such general practice. In their relations with the Federal Republic of Yugoslavia (Serbia and Montenegro) they do not accept the automatic application of bilateral treaties concluded with the former Socialist Federal Republic of Yugoslavia and have terminated their application.

Having all this in mind, I would like to draw your attention to the fact that document E/CN.4/1995/80 is in contravention of current United Nations practice concerning the status of the Federal Republic of Yugoslavia (Serbia and Montenegro) in relation to treaties of the predecessor State. Without any legal basis it is - for the first time - listing the Federal Republic of Yugoslavia

(Serbia and Montenegro) as an automatic successor to treaties of the former Socialist Federal Republic of Yugoslavia.

Therefore, in accordance with the aforementioned facts and argumentation, I would kindly request you to circulate the appropriate correction to document E/CN.4/1995/80.

Should the Federal Republic of Yugoslavia (Serbia and Montenegro) express its intention to be considered a party, by virtue of succession, to the multilateral treaties of the predecessor State with effect as of 27 April 1992, the date on which the Federal Republic of Yugoslavia (Serbia and Montenegro), as a new State, assumed responsibility for its international relations, the Republic of Croatia would take note of that notification of succession.

I would kindly request your assistance in distributing the present letter as a document of the fiftieth session of the General Assembly, under the item entitled "Human rights questions: implementation of human rights instruments" and of the 1995 substantive session of the Economic and Social Council, under the item entitled "Social, humanitarian and human rights questions: human rights questions".

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ECONOMIC AND SOCIAL COUNCIL
Substantive session of 1995
SOCIAL, HUMANITARIAN AND
HUMAN RIGHTS QUESTIONS:
HUMAN RIGHTS QUESTIONS

Letter dated 1 February 1995 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the Secretary-General

I have the honour to present to you, in your capacity as depository of multilateral treaties, the position of my Government concerning document E/CN.4/1995/80 of 28 November 1994, entitled "Status of the international covenants on human rights".

The annex to that document deals with the status of succession, accession or ratification of human rights treaties by States successors to the former Socialist Federal Republic of Yugoslavia, the former Union of Soviet Socialist Republics and the former Czechoslovakia. On the list of States successors to the former Socialist Federal Republic of Yugoslavia, parties to human rights treaties, the dates of receipt of the instruments of ratification of the former Socialist Federal Republic of Yugoslavia have been indicated as the dates of receipt of the relevant instruments of the Federal Republic of Yugoslavia (Serbia and Montenegro), under the name "Yugoslavia". The Government of the Republic of Macedonia objects to this indication and regards it as a claim of the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue the personality of the former Socialist Federal Republic of Yugoslavia, including all its internal, international, legal and political aspects.

I should like to reiterate that in accordance with the relevant resolutions of the United Nations, General Assembly resolution 47/1, and Security Council resolutions 757 (1992) and 777 (1992), concerning this issue, the opinions of the Arbitration Commission of the International Conference on the Former Yugoslavia, in particular opinions No. 8, No. 10 and No. 11 (see A/48/874-S/1994/189, annex) and the general rules of international law on the succession of States, the Federal Republic of Yugoslavia (Serbia and Montenegro) is not -

and cannot be - considered the sole and automatic successor of the former Socialist Federal Republic of Yugoslavia.

My Government wishes to stress the fact that the United Nations and other organizations that belong to the United Nations system have confirmed the aforementioned legal status of the Federal Republic of Yugoslavia (Serbia and Montenegro) relating to treaties and to membership in international organizations.

Other international organizations depositaries of multilateral treaties (i.e., the World Health Organization, the Council of Europe, the Customs Cooperation Council, etc.), as well as Governments depositaries of multilateral treaties (i.e. the Treaty on the Non-Proliferation of Nuclear Weapons) have also acted in accordance with the above-mentioned United Nations decisions and international practice.

Numerous States have also accepted such general practice and in their relations with the Federal Republic of Yugoslavia (Serbia and Montenegro) they do not accept the automatic application of bilateral treaties concluded with the former Socialist Federal Republic of Yugoslavia and have terminated their application.

Having all this in mind, I should like to draw your attention to the fact that document E/CN.4/1995/80 is in clear contravention of current United Nations practice concerning the status of the Federal Republic of Yugoslavia (Serbia and Montenegro) in relation to treaties of the predecessor State. Without any legal basis it is - for the first time - listing the Federal Republic of Yugoslavia (Serbia and Montenegro) as an automatic successor to treaties of the former Socialist Federal Republic of Yugoslavia. I, therefore, deem it necessary in accordance with the aforementioned facts and argumentation that Your Excellency circulates a corrigendum to document E/CN.4/1995/80.

I should like to ask your kind assistance in circulating the present letter as a document of the fiftieth session of the General Assembly, under the item entitled "Human rights questions: implementation of human rights instruments" and of the 1995 substantive session of the Economic and Social Council, under the item entitled "Social, humanitarian and human rights questions: human rights questions".

(Signed) Denko MALESKI
Ambassador Extraordinary
and Plenipotentiary